

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **MAR 13 2013** OFFICE: TEXAS SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for review and issuance of a new decision.

The petitioner is a plastic design and parts supplier. It seeks to employ the beneficiary permanently in the United States as a computer graphic designer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL), accompanied the petition.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

Pursuant to the Form I-140, Immigrant Petition for Alien Worker, the director issued a Request for Evidence (RFE) on September 1, 2010. The response was due on October 4, 2010. As the director did not receive a response, the Form I-140 was denied on April 27, 2011.

On appeal, the petitioner asserts that the denial was not justified as the response was timely submitted and received by the Service Center. The AAO concurs. Relevant FedEx delivery documentation indicates that the documents were delivered on September 30, 2010, prior to the response due date. The case will be remanded to the director for review of the entire record and the response to the RFE filed by the petitioner. The director will issue a new decision based on his review.

ORDER: The director's decision is withdrawn; the petition is remanded to the director for further review and issuance of a new decision, which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).